

**Water Resources Agreement between the City of Santa Fe
and Santa Fe County**

This Water Resources Agreement ("Agreement") is entered into by and between Santa Fe County ("County"), a political subdivision of the State of New Mexico, and the City of Santa Fe ("City"), a municipal corporation of the State of New Mexico, this 11th day of January, 2005.

Recitals

WHEREAS, the City and County entered into the Agreement to Deliver Water (the "1994 City/County Agreement", and commonly referred to as the City/County Wheeling Agreement) on August 10, 1994, which agreement allows the County to take delivery of and pay for up to 500 acre feet of water per year (afy) at enumerated points of delivery and which incorporates by reference the City and County Negotiating Committee Report and Recommendations for Extension of Water Service and Water Delivery dated December 15, 1993; and

WHEREAS, the 1994 City/County Agreement expires July 3, 2005; and

WHEREAS, the City and County desire to supersede the 1994 City-County Agreement with a new agreement; and

WHEREAS, the City and County are parties to a San Juan-Chama Project (SJCP) Contract in the amount of 5,605 afy with the United States of America, Department of the Interior, Bureau of Reclamation, for the furnishing of a municipal water supply for the County and City dated November 23, 1976; and

WHEREAS, the City and County recognize that the use of SJCP water will be directly available to the City and County through the Buckman Direct Diversion (BDD) Project at a time in the future; and

WHEREAS, the City and County have filed a joint application with the Office of the State Engineer to divert the SJCP Contract water using the proposed BDD Project; and

WHEREAS, the SJCP Contract grants to the County and City an exclusive right to allocate, consumptively use and dispose of 5,605 afy and there exists a dispute between the County and City concerning the allocation of water between the parties; and

WHEREAS, the County and City desire to resolve the allocation of the SJCP Contract water; and

WHEREAS, the County and City will continue to cooperate on the funding, permitting and construction of the proposed BDD Project to provide regional water resources; and

1 **WHEREAS**, the County and City will cooperate on the purchase of future water rights
2 for use in the BDD Project.

3
4 **NOW**, therefore, upon the mutual consideration described by this Agreement, including
5 the covenants and promises contained herein, the adequacy of which are acknowledged
6 by the parties, the County and City agree as follows:

7
8 **Definitions.** Capitalized words or phrases used in this Agreement, as defined below,
9 shall have the following meanings:

10
11 **afy** means acre feet per year.

12
13 **Agreement** means this "Water Resources Agreement between the City of Santa Fe
14 and Santa Fe County".

15
16 **BDD Board** means the governing board of directors of the BDD Project as established by
17 the BDD Joint Powers Agreement.

18
19 **BDD Joint Powers Agreement** means the "Joint Powers Agreement between the City of
20 Santa Fe and Santa Fe County Governing the Buckman Direct Diversion Project" which
21 is executed contemporaneously with this Agreement.

22
23 **BDD Project** means the planned Buckman Direct Diversion Project which will divert
24 surface water from the Rio Grande at Buckman, as described in the draft Environmental
25 Impact Statement for the Buckman Direct Diversion Project. The BDD Project has a
26 diversion capacity of 8,730 afy. The BDD Project includes diversion, treatment,
27 transmission and related works used to deliver water to the respective Independent Water
28 Systems of the City and County.

29
30 **BOR** means the federal United States Bureau of Reclamation.

31
32 **Independent Water System** means the respective water works of the City and the
33 County, as such works exist now and as such works may change or expand in the future.

34
35 **ISC** means the New Mexico Interstate Stream Commission.

36
37 **OSE** means the New Mexico Office of the State Engineer.

38
39 **San Juan/Chama Project (SJCP) Contract** means the consumptive use right of 5,605
40 acre-feet per year acquired by the City and the County under contract with the U.S.
41 Bureau of Reclamation, dated November 23, 1976, and as it may be amended, renewed,
42 converted or replaced.

Agreement

1
2
3 **1. Term.** The term of this Agreement shall be perpetual and shall commence as of the
4 effective date of approval by the respective governing bodies of the City and the County.
5

6 **2. Quantity. Wholesale Water Delivery to the County Independent Water System.**
7 From the effective date of this Agreement until deliveries of water from the BDD Project
8 begin, the City Independent Water System shall provide up to 875 afy to the 3 points of
9 delivery currently serving the County Independent Water System. After deliveries of
10 water from the BDD Project begin, the City Independent Water System shall provide up
11 to 500 afy in perpetuity to the 3 points of delivery of the County Independent Water
12 System. Wholesale Water Delivery shall be subject to Shortage Sharing, Section 9, of
13 this Agreement.
14

15 **3. Quantity. Delivery to City customers outside the City limits using the City**
16 **Independent Water System.** The Wholesale Water Delivery provided to the County
17 Independent Water System shall not include the quantity necessary to supply City
18 customers outside the City limits using City Independent Water System infrastructure.
19

20 **4. Quantity. Re-delivery to City customers using County Independent Water**
21 **System.** The Wholesale Water Delivery provided to the County Independent Water
22 System shall not include the quantity necessary to supply City customers on the County
23 Independent Water System. The City shall supply the County Independent Water System
24 sufficient water supply to serve the City's customers on the County Independent Water
25 System. The City and County shall jointly prepare a report of 'Re-delivery to City
26 customers using County Independent Water System infrastructure' within 6 months of
27 the effective date of this Agreement and present it to respective governing bodies of the
28 City and County.
29

30 **5. Quantity. Allocation of the City and County jointly owned San Juan Chama**
31 **Project (SJCP) Contract.** The City and County shall cooperate on the amendment,
32 renewal, conversion or replacement of the jointly owned San Juan Chama Project (SJCP)
33 Contract. The City and the County agree that the jointly owned SJCP Contract for 5,605
34 afy shall be allocated as follows; the County's allocation of the SJCP Contract shall be
35 375 afy and the City's allocation of the SJCP Contract shall be 5,230 afy. The City and
36 County shall cooperate and provide notification to the other party of any agreements
37 affecting the jointly owned SJCP Contract which require the signature of the other party.
38 The City and the County agree that this allocation is a complete and full resolution of the
39 SJCP Contract allocation issue. Beginning on January 1, 2005, the County will be
40 responsible for its 2005 SJCP Contract allocation and all future year allocations,
41 including payments to the BOR, storage, permitting and use. The SJCP Contract
42 allocation is separate from the Wholesale Water Delivery, Section 2, of this Agreement.
43

44 **6. Cooperative Water Right Transfers of County Water Rights into the City's**
45 **Buckman Groundwater System for Offset Purposes.** The County may transfer, for
46 offsetting purposes only, up to 1325 afy (1700 afy County BDD Project capacity – 375

1 afy County SJCP Contract water) into the City's Buckman well permit, RG-20516;
2 provided, that the City is a co-applicant on all such transfers and that the County takes
3 responsibility for such transfers, including all costs associated with protested
4 applications. The City shall be advised of all settlement discussions and proposed
5 conditions of approval regarding such applications and shall cooperate with the County
6 on all such transfers provided that such transfers do not adversely affect the City's water
7 rights. The County acknowledges that it shall not obtain water deliveries from the City's
8 Buckman well permit, RG-20516, as a result of such transfers, unless the parties
9 otherwise agree in writing. The County may, at a time in the future, transfer the rights
10 that have been moved to the City's Buckman well permit, RG-20516, to the BDD Project.
11 This paragraph replaces and supersedes the "Water Right Transfer Agreement between
12 the City of Santa Fe and Santa Fe County", dated June 30, 2004.
13

14 **7. Drought Protection for the County Independent Water System.** Under drought /
15 catastrophic conditions (extreme drought, acts of sabotage, water quality restrictions,
16 OSE/ISC restrictions), the City shall provide the County Independent Water System an
17 amount of water not to exceed 50% of the County's total 1,700 afy of diversion capacity
18 from the BDD Project. After the deliveries of water from the BDD Project begin and
19 when the County's diversion of surface water from the BDD Project drops below 850 afy
20 (50% of 1,700 afy), the City Independent Water System shall provide the County
21 Independent Water System the necessary water to maintain deliveries of no less than 850
22 afy. This Drought Protection provision shall not be subject to Shortage Sharing, Section
23 9, of this Agreement. The City and County shall be separately responsible for the
24 acquisition and maintenance of their own water right portfolios and any applicable limits
25 placed on water rights contained in their own water right portfolios. **The Drought**
26 **Protection provision is separate from the Wholesale Water Delivery, Section 2, of this**
27 **Agreement and the SJCP Allocation, Section 5, of this Agreement.**
28

29 **8. Conjunctive Use and Sustainability.** The City and County agree to implement
30 conjunctive use management by relying on surface water when it is available and using
31 groundwater only as necessary. The City and County shall prioritize the allocation of
32 water from the BDD Project for affordable housing using the Regional Planning
33 Authority (RPA) Plan and the Affordable Housing Task Force report.
34

35 The City and the County will develop a 'Comprehensive Joint Conjunctive Use and
36 Sustainability Water Resource Strategy' that places the use of surface water as a higher
37 priority than the use of groundwater and which manages the regional aquifer on a
38 sustainable basis. The Strategy shall include a shortage sharing agreement that will help
39 guide management decisions made by the BDD Board and the Regional Planning
40 Authority. The Strategy shall incorporate the principle that the County and the City will
41 consult prior to the drilling of new wells in the area around the City and County
42 Independent Water Systems, as they exist at the time of signing of this Agreement, so as
43 to encourage cooperation, avoid conflict and avoid the impairment of City or County
44 water rights.
45

1 The County reserves the right to drill in-Basin groundwater wells and commence the
2 permitting of additional groundwater wells. The County shall consult with the City on
3 the location of any proposed groundwater wells.
4

5 **9. Shortage Sharing for Wholesale Water Delivery.** The County agrees to a pro rata
6 reduction in the daily Wholesale Water Delivery in the event of a shortage of water
7 supply to the City Independent Water System. The pro rata reduction in the daily
8 delivery to the County Independent Water System shall be computed from actual use and
9 shall be based on the reduction to other City customers from the City Independent Water
10 System under the City's Water Emergency Management Plan Ordinance, currently in
11 effect or as may be amended in the future. The pro rata reduction in the daily Wholesale
12 Water Delivery shall be implemented at the points of delivery currently serving the
13 County Independent Water System.
14

15 **10. Treated Wastewater Effluent Return Flow.** The City shall gain all interest, right
16 or title to return flow received at the City's wastewater treatment plant. The County shall
17 gain no interest, right or title to any return flow received at the City's wastewater
18 treatment plant. The County shall gain the interest, right or title to water delivered to the
19 County Independent Water System which is not received at the City's wastewater
20 treatment plant.
21

22 **11. Points of Delivery.** The Wholesale Water Delivery shall be delivered to the County
23 Independent Water System at any one (1) or all three (3) points of delivery currently
24 serving the County Independent Water System. Additional points of delivery may be
25 requested by the County with the consent of the City, which consent shall not be
26 unreasonably withheld.
27

28 **12. Rates.** The County shall pay to the City a Monthly Meter charge (\$435.21 / 10 inch
29 meter / month) and a Wholesale Water Delivery rate (\$3.50 / 1000 gallons) as determined
30 by the 2004 Cost of Service Study prepared for the City Independent Water System.
31

32 **13. Adjustment of Rates.** The City may adjust the Monthly Meter charge and
33 Wholesale Water Delivery rate over the term of this Agreement. The City shall provide
34 the County at least one hundred eighty (180) days written notice of its intent to adjust the
35 Monthly Meter charge or the Wholesale Water Delivery rate. The City and County
36 acknowledge that the appropriate methodology for computing the Monthly Meter charge
37 and Wholesale Water Delivery rate shall be based on an embedded cost of service study.
38 The Directors of the City and County Independent Water Systems shall resolve any
39 dispute regarding the adjustment of rates in a manner as set forth in Dispute Resolution,
40 Section 16, of this Agreement.
41

42 **14. Metering.** The City shall maintain the meters and related equipment for measuring
43 the quantity of water delivered to the County Independent Water System at the points of
44 delivery. The City shall read the meters and report the readings in monthly billings to the
45 County. Meter reading reports shall include the meter readings for re-delivery to those
46 City customers connected to the County Independent Water System pursuant to Quantity.

1 Redelivery, Section 4, of this Agreement. Calibration of the meters shall be performed at
2 the request of either the City or the County, not more than once during each twelve (12)
3 month period, and the City and the County shall share the expense of calibration equally.
4 The Directors of the City and County Independent Water Systems shall resolve any
5 inconsistency in billing, metering or calibration in a manner as set forth in Dispute
6 Resolution, Section 16, of this Agreement. Failure to pay any monthly billing within 60
7 days shall initiate the notice provision and related procedures described in Dispute
8 Resolution, Section 16, of this Agreement.

9
10 **15. Conditions of Delivery.** The City Independent Water System shall furnish water to
11 the County Independent Water System at a reasonably consistent supply and pressure at
12 the points of delivery. The City Independent Water System shall at all times operate and
13 maintain the system in a manner and shall take such action as may be necessary to furnish
14 the County Independent Water System with the quality and quantity of water required by
15 this Agreement. Emergency failures of pressure or water supply shall excuse the City
16 Independent Water System from this provision for such reasonable time as may be
17 necessary to restore service. The City Independent Water System shall furnish water to
18 the County Independent Water System of such quality as is required for a residential and
19 a commercial customer under applicable water quality regulations. The County shall
20 bear those costs where unusual and / or special conditions exist (such as elevation,
21 terrain, or other conditions) and which result in increased costs to the City Independent
22 Water System.

23
24 **16. Dispute Resolution.** The City and County agree to use any and all methods of
25 dispute resolution, up to and including binding arbitration, to resolve any conflicts arising
26 under this Agreement, the expenses of which shall be shared equally by the City and
27 County. Disputes shall be first discussed by representatives of each party having the
28 authority, if necessary, to bind the party that they represent. Such representatives shall
29 use their best efforts to amicably and promptly resolve the dispute. If the parties are
30 unable to resolve the dispute through informal mechanisms or mediation within 30 days
31 of the occurrence of the event or circumstances giving rise to the dispute, either party
32 may give notice to the other party that the dispute is to be submitted to binding
33 arbitration. Any dispute requiring notice shall be reported to the next meeting of the
34 respective City and County governing bodies. Such notice shall contain the name of a
35 proposed arbitrator, and in the event the other party does not agree with the proposed
36 arbitrator, the model guidelines of the American Arbitration Association shall be used to
37 select an arbitrator and govern the conduct of the arbitration, rendering of an award and
38 enforcement of the award consistent with New Mexico state law. Within 60 days of
39 notice an arbitrator shall be appointed and within 120 days of notice the arbitrator shall
40 prepare an award. The arbitrator's award shall be binding on the parties.

41
42 **17. Entire Agreement.** This Agreement contains the Entire Agreement between the
43 City and County with regard to the matters set forth herein.

44
45 **18. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of
46 the parties and their respective representatives, successors, and assigns.

1
2 **19. Counsel.** The City and County acknowledge that they have freely entered into this
3 Agreement with the advice of their respective legal counsel.
4

5 **20. Other Documents.** The parties agree to execute such further and other agreements
6 as reasonably may be required from time to time to carry out the provisions of this
7 Agreement.
8

9 **21. Law.** The laws of the State of New Mexico shall govern this Agreement.
10

11 **22. Notices.** Any notice, demand, request, or information authorized or related to this
12 Agreement shall be deemed to have been given if mailed (return receipt requested), hand
13 delivered or faxed as follows:
14

15 **To the City:** Director of the Sangre de Cristo Water Division
16 City of Santa Fe
17 PO Box 909
18 Santa Fe, NM 87501
19 Phone: 955-4200
20 Fax: 955-4352
21

22 **With a copy to:** City Manager
23 City of Santa Fe
24 PO Box 909
25 Santa Fe, NM 87501
26 Phone: 955-6509
27 Fax: 955-6683
28

29 City Attorney
30 City of Santa Fe
31 PO Box 909
32 Santa Fe, NM 87501
33 Phone: 955-6511
34 Fax: 955-6748
35

36 **To the County:** Santa Fe County Utilities Director
37 Santa Fe County
38 205 Montezuma
39 Santa Fe, N.M. 87505
40 Phone: 986-6210
41 Fax: 992-8421
42

43 **With a copy to:** County Manager
44 Santa Fe County
45 P.O. Box 276
46 Santa Fe, N.M. 87504

Phone: 986-6200
Fax: 986-6362

County Attorney
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504
Phone: 986-6279
Fax: 986-6362

IN WITNESS WHEREOF, each of the City of Santa Fe, New Mexico, and the County of Santa Fe, New Mexico, has caused this Agreement to be executed and delivered by its duly authorized representatives as of the date specified below.

Chairman,
Board of Santa Fe County Commissioners

1-12-05
Date

Approved as to form
Santa Fe County Attorney

1-11-05
Date

Valerie Espinoza
Santa Fe County Clerk

1/11/05
Date



Mayor
City of Santa Fe Council

1-15-05
Date

Approved as to form
City of Santa Fe Attorney

1/14/05
Date

Galanda y. N. g. p.
City of Santa Fe Clerk
ccmtg 1/12/05

1-18-05
Date